IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7774 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARHARI LAXMANBHAI BAROT

Versus

GUJRAT ELECTRICITY BOARD

Appearance:

MR PC MASTER for Petitioner

MR MD PANDYA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 04/05/2000

ORAL JUDGEMENT

Heard learned counsel Mr. P.C. Master appearing on behalf of the petitioner and learned counsel Mr. M.D. Pandya for respondent no.1. None present for respondent no.2.

2. Learned counsel for the petitioner submitted that the Government by order dated 28-3-1989 made a Reference to the Industrial Tribunal to decide the dispute between Gujarat Electricity Board and Mr. N.L. Barot, Senior Assistant working in the respondent Board. The terms of reference was, whether Shri N.L. Barot, Sr. Assistant is entitled to three increments withheld by the order of the Superintending Engineer (O & M) Mehsana dated 30-5-1987, and whether he is entitled to the arrears of the aforeswaid amount. After receipt of the reference the Tribunal fixed the date on 29-9-1989 and on that date because of the absence of the union the case was adjourned to 23-11-1989. On that day also union did not take any step. Mr. Barot being apprehensive that the union may not take interest in the case and file claim on his behalf, he filed an application to the Tribunal to grant him time for filing his claim application. Thereafter the case was adjourned to 9-1-1990. The union filed an application praying for time for filing claim application. Mr. N.L. Barot did not take any steps independently. Thereafter the case was adjourned to 22-2-90. On that day neither the union nor the petitioner was present and therefore the case was adjourned to 12-4-90. On 12-4-90 the Tribunal was closed and therefore the case was fixed on 16-7-90. An application dated 12-4-90 has been prepared by the Industrial Relations Officer, Mehsana of respondent no.1 addressed to the Tribunal and the same was filed before the Tribunal on 14-6-90. In the said application an endorsement has been made by the Assistant Secretary (Legal) of the Gujarat Electricity Employees Union, Sabarmati, that since the union is not interested in the reference, they want to withdraw their demand. In accordance with the aforesaid endorsement of the union the Tribunal by its order dated 14-6-90 allowed the union to withdraw their claim and the matter was closed. The order of the Tribunal has been annexed at Annexure-E.

3. Mr. Master, learned counsel appearing on behalf of the petitioner submitted that the petitioner is interested in the matter because he is the person affected by the order of withdrawal of the claim. Learned counsel submitted that the case was fixed by the Tribunal on 16-7-90 and the petitioner was not aware that

the Electricity Board through its Industrial Relations Officer filed any application on 14-6-90 along with endorsement of the Asst. Secretary (Legal) of the union at Sabarmati seeking permission from the Tribunal to withdraw the claim. Learned counsel for the petitioner further submitted that the Tribunal should not have closed the matter without hearing the petitioner and particularly when the application did not bear the signature of the petitioner consenting to withdraw the claim. It is further submitted by leaned counsel for the petitioner that the union without the knowledge of Mr. N.L Barot who is most affected by the order of the tribunal has withdrawn his claim. Learned counsel consequently submitted that the order of the Tribunal permitting the union to withdraw the claim is unjust and illegal and it adversely affected the interest of Mr. N.L. Barot, Sr. Assistant. Learned counsel also submitted that since the case was fixed by the Tribunal on 16-7-90, the order permitting the union to withdraw the cas on 14-6-90 was illegal and unjust and should be quashed.

4. There is sufficient force in the submission of the learned counsel for the petitioner. Learned Tribunal should have heard Mr. N.L. Barot , Sr. Asstt. before allowing the union to withdraw the claim. Further when the case was fixed on 16-7-90 the case should not have been closed by the Tribunal on 14-6-90. It further appears that the application filed by the Industrial Relations Officer of the Gujarat Electricity Board and the endorsement made thereon by the Asstt. Secretary (Legal) of the union at Sabarmati do not bear the signature of Mr. N.L. Barot consenting or authorising the union to withdraw the claim. Therefore I am of the view that the Tribunal should not have allowed the application filed by the Industrial Relations officer and endorsed by the union. By this order of the Tribunal Mr. N.L. Barot, Sr. Assistant has been adversely affected, and therefore it is necessary that the reference made by the Government to decide the dispute between the petitioner and Gujarat Electricity Board should be decided on merit. Accordingly the order of the Tribunal dated 14-6-90 passed in Reference (I.T.) No. 319/87 is hereby quashed. The case is send back to the Industrial Tribunal, Ahmedabad, to decide the dispute afresh, in accordance with the terms of the reference of the Government at Annexure-C. The matter is remanded back to the Tribunal accordingly for the decision in accordance with law. This writ petition is accordingly allowed. Rule is made absolute. However I make no order as to

cost. The Tribunal may decide the matter as early as possible since the matter has been already delayed.

Dt: 4-5-2000

(P.K. Sarkar, J)

/vgn.